

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,	)	Case No. 5:22-CR-00221-OLG-1
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KEISHA LYN SWARNER,	)	
	)	
Defendant.	)	Friday, September 30, 2022
_____	)	3:08 P.M.

TRANSCRIPT OF MOTION TO REOPEN DETENTION HEARING AND  
GRANT PRETRIAL RELEASE

**BEFORE THE HONORABLE ELIZABETH S. CHESTNEY**  
**UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

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INDEX

	<u>PAGE</u>
Case called	3
Proffer of Testimony of Agent Gerald Martin	7
Arguments on Government's Motion To Reopen Detention Hearing and Grant Pretrial Release	
By: Mr. Calve	15
By: Mr. Kimmelman	19
Court's Ruling	25
End of Proceedings	26
Certificate of Transcriber	26

Direct      Cross      Redirect      Recross

WITNESSESFOR THE GOVERNMENT:

(None)

FOR THE DEFENDANT:

(None)

EXHIBITS:IDEVDFOR THE GOVERNMENT:

(None)

FOR THE DEFENDANT:

(None)

San Antonio, Texas - Friday, September 30, 2022 (3:08 p.m.)

P R O C E E D I N G S

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THE COURT: You may be seated.

THE CLERK: United States of America versus Keisha Lyn Swarner, SA:22-CR-00221.

THE COURT: Good afternoon. I'll have appearances, please.

MR. CALVE: Billy Calve for the United States. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KIMMELMAN: Good afternoon, Your Honor. David Kimmelman for Ms. Swarner.

THE COURT: Good afternoon. Good afternoon, Ms. Swarner. We are here today on the motion to reopen the detention hearing and grant pretrial release.

Government's not opposed to reopening the hearings since she didn't have one, correct?

MR. CALVE: That's right, Your Honor.

THE COURT: Okay. All right.

So Mr. Kimmelman, where should we begin?

MR. KIMMELMAN: Your Honor, I think that the Government has --

THE COURT: The burden on the matter of detention?

MR. KIMMELMAN: Well, they did elect the rebuttable

1 presumption. And so we're prepared to rebut that presumption and  
2 shift the burden back to the Government.

3 THE COURT: Okay.

4 MR. KIMMELMAN: And by way of proffer, Your Honor, I  
5 have submitted to the Court the report from Dr. Michael Thompson.

6 THE COURT: And I've read it.

7 MR. KIMMELMAN: And in addition, there is the Pretrial  
8 Services Report that sets forth Ms. Swarner's personal  
9 circumstances, her family relationships, and things of that sort.  
10 The only additional information to proffer -- and by the way, Mr.  
11 Swarner is present in the courtroom and he did verify all of her  
12 information.

13 The additional information I would proffer to the Court  
14 is that while Ms. Swarner has been detained, she has had issues  
15 with the medication regimen there at the detention facility. She  
16 has had ongoing issues with her eardrum that was injured as a  
17 child.

18 She has been developing frequent infections in her ear  
19 that have not been adequately addressed by the medical staff  
20 there at the detention facility. And that would be our proffer.  
21 And I think that would be sufficient to rebut the presumption.  
22 Unless the Court has any questions about any of the information  
23 that the Court has --

24 THE COURT: I believe that your response or your motion  
25 and the doctor's report indicate that the children -- the minor

1 children that were in the home have been removed. Is that  
2 correct?

3 MR. KIMMELMAN: That's correct, Your Honor. And there  
4 is -- thank you for that question. There is an ongoing case with  
5 the Child Protective Services for the State of Texas. Ms.  
6 Swarner is vigorously defending that case. She has counsel in  
7 that case. In fact, she has a hearing scheduled for next week in  
8 that case and she is fighting that case as we speak.

9 THE COURT: Okay. All right.

10 Mr. Calve, are you going to call a witness?

11 MR. CALVE: Yes, Your Honor. I was going to offer a  
12 proffer from Special Agent Gerald Martin here with NCIS. I did  
13 have a couple of corrections to the Pretrial Services Report.

14 THE COURT: It was quite a while ago.

15 MR. CALVE: Yes, Your Honor. It was.

16 THE COURT: And I believe I had -- I think we had a  
17 preliminary hearing in this case, and there was -- or was it a  
18 preliminary hearing on the original charge?

19 MR. CALVE: I don't believe we did, Your Honor.

20 THE COURT: Okay. Then it was just the affidavit that  
21 I'm recalling and the facts from. All right.

22 MR. CALVE: Your Honor. Just that on page 4 of the  
23 Pretrial Services Report, where it lists the criminal history,  
24 for example, the animal cruelty, bestiality. It says that all of  
25 this happened when she was ten-years-old. But she is 39-years-

1 old. I don't believe she was ten-years-old in 2002. So I think  
2 that's just a mistake on the age of the Defendant at that  
3 particular time.

4 THE COURT: Okay. But it was when she was a juvenile,  
5 just not when she was ten?

6 MR. CALVE: I don't think so, Your Honor. If my math  
7 is correct, and I don't have a date of birth exactly in front of  
8 me for the Defendant, but if she's 39-years-old --

9 THE COURT: Okay.

10 MR. CALVE: -- today.

11 THE COURT: Then she was in her --

12 MR. CALVE: Okay. So I do have a date of birth. I  
13 apologize, Your Honor. That would be 1982. So that would put us  
14 at 20-years-old --

15 THE COURT: Okay.

16 MR. CALVE: -- for those events.

17 THE COURT: All right. That makes a lot more sense  
18 because it had felony convictions. And I wasn't sure I thought  
19 maybe the State of Washington had very strange rules, but --

20 MR. CALVE: I was wondering the same.

21 THE COURT: Okay. All right.

22 MR. CALVE: And the only other correction would be that  
23 on page 1 of the Pretrial Services Report, it has the original  
24 offense that was in the criminal complaint, abusive sexual  
25 contact with a minor. Of course, since then, she has been

1 indicted on other offenses.

2 THE COURT: Including, is it distribution?

3 MR. CALVE: Distribution of child pornography, aiding  
4 and abetting. And then promotion of child pornography,  
5 assimilating state law and then online solicitation of a minor  
6 also assimilating state law.

7 THE COURT: Okay. And you said you were going to  
8 provide a proffer?

9 MR. CALVE: Yes, Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. CALVE: This proffer is from Special Agent Gerald  
12 Martin with the Naval Criminal Investigative Service. He's been  
13 with NCIS since 2006, and participates in investigations into the  
14 exploitation of children. Agent Martin is the case agent over  
15 the investigation into the Defendant, Keisha Swarner. He's here  
16 for a bond hearing today.

17 This proffer is going to highlight some of the  
18 pertinent facts from the investigation, some of which may have  
19 already been included in the criminal complaint, for which Agent  
20 Martin was the affiant, as well as provide some additional  
21 information to the Court on the matter of bond.

22 On April the 1st, 2022, a concerned parent, who I'm  
23 going to refer to as the Complainant, approached Joint Base San  
24 Antonio Lackland Security Forces about a Lackland resident. The  
25 Defendant had been sending explicit text messages to her 13-year-

1 old son who I'm going to call Child Victim number 1. She had  
2 discovered a phone in her son's possession where Defendant was  
3 saved as a contact called "mom".

4 Among other texts, Complainant found CV1 had sent  
5 Defendant a photo of himself wearing only a towel stating he had  
6 no hot water, and the Defendant replying that he should shower at  
7 her house. Complainant also found discussions between CV1 and  
8 the Defendant about lewd pictures of CV2, Child Victim number 2  
9 is how I'm going to refer to that individual.

10 Earlier in the year in January 2022, the Complainant  
11 had reported to Lackland Security Forces that Defendant hosted a  
12 coed children's sleep over at her home where children were  
13 kissing and playing spin the bottle while the Defendant was  
14 present. Complainant had reported at that time that Defendant  
15 impersonated Complainant while talking with another child's  
16 mother in order to get permission for that child to sleep over.

17 As a result of the sleep over, Complainant did not  
18 allow her 13-year-old son, CV1, to have contact with Defendant or  
19 her husband, Carl Swarner. But nevertheless, on April the 1st,  
20 Complainant had found the cell phone in CV1's possession and  
21 found it containing explicit conversations, records of money sent  
22 from Defendant to CV1 via Cash App, and texts from CV1 to  
23 Defendant asking if he could use the money.

24 Complainant found other expensive gifts that had been  
25 given to CV1 by the Defendant, including a Visa card, clothes, an



1 Xbox game and an Xbox controller. On April the 5th, 2022 the  
2 Defendants husband, Carl, called base authorities and said he  
3 wanted his cell phone back. He was told the phone had been taken  
4 up by investigators.

5 CV1 spoke with base authorities stating that Defendant  
6 had given him three or four iPads and two iPhones to communicate,  
7 and told him not to tell his parents about the devices.  
8 Defendant told CV1 that her 12-year-old daughter, CV2, had never  
9 seen a penis and paid CV1 money to take pictures of his penis and  
10 send them to CV2. CV1 took three to four pictures of his penis  
11 and sent them to CV2, and CV2 sent him approximately four  
12 pictures of her breasts.

13 The first time Defendant made this request of CV1,  
14 Defendant told CV1 she would pay him in cash. The second time,  
15 Defendant said she would buy him anything at GameStop. The third  
16 time, Defendant said she would give him \$20. CV1 also said  
17 Defendant paid him money to put on a girl's bathing suit.

18 CV1 stated he would frequently go to Defendant's  
19 residence at Lackland. Defendant would text him and tell him to  
20 meet at a certain location and Defendant and CV2 would pick CV1  
21 up near his home or school and bring them -- bring him to their  
22 residence. Defendant told CV1 it was illegal for her to bring  
23 him onto the base so he was not to tell anyone about it.

24 While at Defendant's residence, Defendant told CV1 to  
25 cuddle with CV2 on various occasions. On one such occasion,

1 Defendant told CV1 to have sex with CV2, which he refused.

2 Defendant also told CV1 to touch CV2's vagina. NCIS also spoke  
3 with the Complainant concerning this investigation.

4 CV1 had been telling Complainant he was going on long  
5 runs with their dog when he was really being picked up in a  
6 vehicle by the Defendant and taken to various places like Sonic,  
7 McDonald's and eventually back to the Defendant's residence at  
8 Lackland.

9 A review of CV1's cell phone revealed several occasions  
10 in March 2022 where Defendant sent money to CV1 on Cash App. A  
11 review of CV1's messages confirm that CV1 sent photos of his penis  
12 to CV2 on several dates in March. A review also showed CV2  
13 sending photos of her breasts to CV1 on March the 22nd. On that  
14 same day, this conversation took place between CV1 and the  
15 Defendant:

16 "CV1: I showed her my dick, so when can I see them  
17 titties?

18 "DEFENDANT: Talk to her.

19 "CV1: Okay. Can you also talk to her?

20 "DEFENDANT: Yeah, when she comes out of the shower.

21 "CV1: "Okay. I'm taking a shower. I want to see her  
22 tito's. I love her ass. She be teasing me though.

23 "DEFENDANT: Defendant: Enjoy your shower. Yeah, I  
24 agree.

25 "CV1: About me seeing her titties?"

1 "DEFENDANT: I agree with you. I will tell her."

2 Shortly after that, CV2 sent photos of her breasts to  
3 CV1. And notably the following conversation also took place on  
4 March the 27th. Defendant said, "But you have to try and touch  
5 her too." Following a conversation in which she had engaged with  
6 CV1 about what appeared to be sexual contact between CV1 and CV2.  
7 And it concluded with Defendant telling CV1, "Now masturbate."

8 In this conversation on March 27th, Defendant said:

9 "DEFENDANT: But you have to try and touch her, too.

10 "CV1: Okay.

11 "DEFENDANT: She said you started to and then you  
12 stopped.

13 "CV1: Touch her? Like where?

14 "DEFENDANT: Vagina.

15 "CV1: I'm scared. What if she gets uncomfortable?

16 "DEFENDANT: She will tell you.

17 "CV1: Okay.

18 "DEFENDANT: I told her she would never know if she  
19 likes it unless she tries. She said okay."

20 A review also showed the following exchange between  
21 Defendant and CV1 the next day.

22 "DEFENDANT: Did your penis go inside CV2?

23 "CV1: Maybe. We tried.

24 "DEFENDANT: Did you really?

25 "CV1: We didn't know how to do it.

1 "DEFENDANT: LOL. You'll figure it out.

2 "CV1: Okay.

3 "DEFENDANT: Try again.

4 "CV1: When? Today?

5 "DEFENDANT: Whenever you want."

6 Further review of the phone showed regular FaceTime  
7 videos and calls between CV1 and the Defendant as well as that  
8 CV1 was friends with Defendant on Snapchat.

9 NCIS arrested the Defendant pursuant to a criminal  
10 complaint on April the 14th of 2022, Mirandized her, and  
11 conducted a recorded post-arrest interview. Defendant initially  
12 denied involvement in CV1 and CV2's relationship, claiming she  
13 never brought CV1 on base and CV2 was the one who was using  
14 Defendant's phone to text with CV1.

15 Defendant claims CV1 was lying about bringing him on  
16 base. And she brought up that she recorded audio of him  
17 confessing that he was making this up. But the Defendant's story  
18 slowly changed.

19 Defendant admitted to sending many of the messages,  
20 including the exchange where Defendant agreed to talk to CV2  
21 about sending photos of her breasts to CV1, and in the exchange  
22 where Defendant told CV1 to touch CV2 on her vagina and to try  
23 again to have sex. She acknowledged CV1 had been coming to her  
24 home.

25 Agents took custody of the Defendant's phone, and

1 during their review found TikTok messages between Defendant and  
2 CV1 on April the 4th, 2022. This was after CV1's cell phone had  
3 been turned in to the authorities.

4 In these TikTok messages, Defendant told CV1: "Your  
5 mom is going for criminal charges." And then attempted to coach  
6 CV1 about his story saying, "But CV1, you were never in my car.  
7 CV2 always met you at the park." Even after CV1 replied, no,  
8 Defendant reiterated, "CV1, you were never in my car. Yes, you  
9 saw CV2, but she met you at the park. There's nothing wrong with  
10 doing that."

11 Defendant also asked CV1 if he could get on Snapchat.  
12 Later in the conversation, CV1 told Defendant he was going the  
13 next day to talk to the base people. Defendant asked, "What are  
14 you going to say?" CV1 responded, "You should have told the  
15 truth." The next day, Carl Swarner attempted to get CV1's phone  
16 from the base authorities.

17 Further review of Defendant's phone show that the  
18 following day on April the 6th, Defendant instructed CV2 to go  
19 into CV1's iPad and delete the TikTok messages from her. Agents  
20 have found recordings on Defendant's phone from April 22 -- April  
21 2022, in which she seemingly is continuing to try to coach CV1  
22 after he spoke to the investigators and attempting to get him to  
23 say that he lied to them.

24 Defendant tries to lead CV1 into saying that he never  
25 went to her house and only had gone to the park. Notably,

1 Defendant has since admitted to investigators that CV1 was coming  
2 to her house.

3 Special Agent Martin has found older messages from  
4 March 2022 in which Defendant repeatedly pressured CV1 about his  
5 physical contact with CV2, becoming aggressive and cursing at CV1  
6 when CV1 was not behaving according to her expectations, saying,  
7 "Why are you not cuddling with her ass?" And "You know you can  
8 make the move, too. You did F-U-C-K up today. What is wrong?"

9 On another occasion, Defendant texted CV1 with a thread  
10 about taking away his GameStop saying, "You're a lying bitch. We  
11 just saw you at your house asshole. Lying just lost you  
12 GameStop."

13 On March 16, 2022, Defendant instructed CV1, "Put your  
14 phone away so no one can find it. And if they find it, we're in  
15 so much trouble." Special Agent Martin also found photos of CV1  
16 in the Defendant's phone wearing what appears to be a girl's  
17 bathing suit.

18 In a jail call between Defendant and Carl Swarner from  
19 May 2022, Defendant is discussing her case and says it all  
20 depends on what CV2 said, if CV2 lied. At the time all this  
21 happened, Defendant was a fifth-grade school teacher with  
22 Edgewood ISD. And that concludes the proffer, Your Honor.

23 THE COURT: Mr. Kimmelman, are you going to cross-  
24 examine the agent?

25 MR. KIMMELMAN: No, Your Honor.

1 THE COURT: Okay. All right.

2 Mr. Calve, any other evidence?

3 MR. CALVE: No, Your Honor. Just argument.

4 THE COURT: Okay. Mr. Kimmelman, any other evidence?

5 MR. KIMMELMAN: No, Your Honor.

6 THE COURT: Okay. I guess I'll let you go first.

7 MR. CALVE: Thank you, Your Honor. I'll start by  
8 noting that this is a presumption case.

9 THE COURT: And you did receive a copy of the  
10 psychologist's report, I assume?

11 MR. CALVE: Yes, Your Honor. I did.

12 THE COURT: Okay.

13 MR. CALVE: I understand that this is a presumption  
14 case. We do begin with the presumption that there are not  
15 conditions this Court could set to reasonably assure community  
16 safety. The Defendant has filed that letter from the doctor I  
17 understand which states that in the doctor's opinion, there could  
18 be conditions.

19 So if this Court is inclined to accept that the  
20 presumption has rebutted -- has been rebutted, it's still the  
21 Government's position that there are no conditions that can be  
22 set to reasonably assure community safety. And there are really  
23 two big issues that the Government would ask the Court to  
24 consider in that respect.

25 The first is that the level of danger to minors that is

1 involved in this case and being perpetrated by the Defendant in  
2 the facts from the proffer, is too high to set conditions that  
3 could reasonably assure community safety.

4 If we look at the Bail Reform Act, the first factor  
5 that the statute directs us to consider is the nature and  
6 circumstances of the offense charged, including if the offense  
7 involves a minor victim. We have two minor victims in this case.  
8 And the nature and circumstances of this case, including the host  
9 of charges that I described to the Court earlier, are very  
10 severe.

11 We also look to weight of the evidence, which under  
12 (g) (2) of 3142 is also a factor to consider and the Government  
13 contends that it is strong in this case. We have a plethora of  
14 messages. We have records of money being transferred and other  
15 data that corroborate the story that has been told in this case.

16 And finally, under 3142(g) (4), we look to the nature  
17 and seriousness of the danger to any person or the community that  
18 would be posed by the Defendant's release. The proffer that is  
19 before the Court, specifically the messages, show her disregard  
20 for the safety of children.

21 We have a situation here that is not a case of somebody  
22 who's passively sitting at home reviewing child sex assault  
23 material on their computer. This Defendant is a hands-on  
24 offender. It may not have been her hands that were placed on  
25 children. But she directed, she caused, and she facilitated



1 sexual contact between these minors.

2 And we can see from the messages that were part of the  
3 proffer that these children are stating and expressing fear and  
4 discomfort. CV1 is telling her, I'm scared. What if she gets  
5 uncomfortable? Talking about the girl. The Defendant doesn't  
6 care. She says, she'll tell you.

7 And then later when she tries to confirm with him  
8 whether they had sex, she asked if his penis went inside her and  
9 he said maybe. And again, this is a minor child. He says we  
10 didn't know how to do it. And the Defendant says, LOL, you'll  
11 figure it out and tells him to try again.

12 That is someone who is not at all concerned with the  
13 safety of these children, and in fact, has been directly a part  
14 of the sexual manipulation and the exploitation of the two child  
15 victims in this case. And has admitted to sending text messages  
16 that pertained to her talking to CV2 about sending photos of her  
17 breasts. So that's the first area that I'd ask the Court to  
18 consider.

19 The second issue that I would ask the Court to consider  
20 is the pattern of deceptive behavior that we see from the  
21 Defendant throughout the facts and circumstances of this case.  
22 From impersonating another parent to giving a minor child secret  
23 electronic devices and telling him that he can't tell his family  
24 about them. And she was saved in the phone as mom. And then  
25 once that phone was taken up by federal authorities, we have her

1 husband trying to get it back.

2 And then of greatest concern to the Government, we see  
3 her attempt to coach victims in this case, because what did the  
4 Defendant do once she realized that she was likely under  
5 investigation? She got on TikTok, and she contacted CV1, and  
6 talked to him about his story in an effort to try to get him to  
7 change it.

8 And we see again, that even as recently as when she's  
9 been in custody, she's still fixated on what CV2 is going to say,  
10 when it pertains to her case. She is focused on what these kids  
11 are going to say at her trial. If she's released on conditions,  
12 she is going to continue to try to meddle in this case. She is  
13 going to seek out contact with the minor victims.

14 She is going to try to influence their testimony, just  
15 as she did whenever she found out she was under investigation.  
16 And she contacted CV1 in TikTok messages, and then shortly after  
17 that, told CV2 to go on and delete the TikTok messages from her  
18 on CV1's iPad. And then again, trying to record CV1, trying to  
19 get him to say that he had never been in her car when later she  
20 admitted to the authorities that he'd been coming to her house.

21 So she can tell the doctor who spoke with her whatever  
22 she wants. Of course, she can tell the doctor that she's going  
23 to follow conditions of the Court. I presume that the doctor  
24 didn't have access to all of the evidence that the Court is  
25 hearing now. But the Defendant can say one thing.

1 I think it's more important to look at the pattern of  
2 behavior that she has exhibited. And it's two big issues when we  
3 look at that pattern. It's a pattern of danger, of sexual  
4 exploitation and manipulation. And it's a pattern of deception,  
5 that raises many questions about whether this Court can set any  
6 conditions that can reasonably assure the safety of the community  
7 and particularly prevent the further traumatization of the  
8 victims in this case.

9 I submit that the Defendant is going to continue to try  
10 to meddle with their stories and influence the outcome of this  
11 case. So for all those reasons, I would ask this Court to accept  
12 the recommendation of the Pretrial Services Office and keep the  
13 Defendant detained pending her trial.

14 THE COURT: Thank you.

15 Mr. Kimmelman?

16 MR. KIMMELMAN: Thank you, Your Honor.

17 To begin with, Your Honor, of course, we do not admit  
18 any of the accusations that the Government is making. Ms.  
19 Swarner has not been convicted of anything as she sits here  
20 before you today. Specifically, in regards to the issues that  
21 the Government raised on their argument, "the level of danger to  
22 minors." Your Honor, the allegations in this case involve two  
23 alleged victims. That's it. Two. And all of the alleged  
24 contacts were by phone.

25 You heard nothing, because there is nothing. And the

1 Government conceded that there's nothing to suggest that Ms.  
2 Swarner ever physically did anything to any of these alleged  
3 victims. And so when Dr. Thompson -- who by the way was -- did  
4 have access to discovery in this case, discussing with her  
5 possible terms and conditions, that was not to get her approval,  
6 but to measure her ability to understand those conditions, and  
7 the consequences of violating those conditions. And that's  
8 exactly what he did.

9 And in his professional opinion, and you have his CV,  
10 and this is a psychologist who has a tremendous amount of  
11 experience in these kinds of cases, saying that there are terms  
12 and conditions that can be fashioned to protect the community and  
13 specific individuals, CV1 and CV2, as the Government has  
14 described them.

15 This was not a hands-on offense, despite the argument  
16 to the contrary. And it is telling that under the auspices of  
17 CPS, which is in the process of litigation with Mr. and Ms.  
18 Swarner to remove their children based on the allegations brought  
19 forth by the Government, is allowing written communication  
20 between Ms. Swarner and her daughter through CPS.

21 So when she writes a letter to them, those letters are  
22 reviewed by someone to make sure that there's nothing  
23 inappropriate, untoward, threatening, or otherwise improper. And  
24 so Ms. Swarner has already demonstrated her ability to comply  
25 with any condition like that on her.

1 THE COURT: Well, she's incarcerated, so -- and she's  
2 -- her letters go to CPS first. So I'm not really sure that  
3 proves much other than she knows how to behave when somebody is  
4 monitoring her communications.

5 MR. KIMMELMAN: And I'm not talking about the jail  
6 reviewing her --

7 THE COURT: No, I know.

8 MR. KIMMELMAN: -- correspondence. It's CPS. And so  
9 if she were to be released on bond, her communications would  
10 still have to be through CPS. If she were to attempt to  
11 communicate with her daughter or her children outside of CPS,  
12 then she would risk losing her children forever. Because then  
13 CPS, which is already litigating to take her children away, would  
14 have that to go to a judge and say you need to terminate her  
15 parental rights immediately because look what she did.

16 And so not only does she have a federal judge, who is  
17 supervising her through Pretrial Services, but CPS as well. And  
18 the children are in foster care right now. And so it's not like  
19 Ms. Swarner can send them any kind of secret messages because the  
20 kids are under supervision by foster caregivers, as well as  
21 through periodic meetings with CPS caseworkers who are involved  
22 in the childrens' lives, their welfare and communication with  
23 their parents.

24 The crux of this case is digital communication.  
25 There's no question that just based on the Government's proffer

1 today, and it is clear from that proffer that not allowing Ms.  
2 Swarner access to a cell phone, internet, other than for medical  
3 treatment, which can be supervised, no social media or anything  
4 like that, then the concern that the Government raises is more  
5 than adequately addressed by just not having any access to any  
6 sort of digital communications. Which is one of the conditions  
7 that Dr. Thompson is recommending as well.

8 The report of Dr. Thompson also talks about his  
9 assessment based on his professional opinion about her committing  
10 any new sexual offense charges, and he has laid out all of the  
11 reasons why she is at low risk for, as he said, arrest on new  
12 sexual offense charges. Her age, her criminal history, which is  
13 remote, and the statute in Washington, and I'm not able to get  
14 the underlying documents, so we don't have those. Animal  
15 cruelty-bestiality.

16 Whatever that means, if it's a more inclusive statute,  
17 or that's the specific statute or what, but regardless, that is  
18 already over 20 years old. The information in the Pretrial  
19 Services Report is that it stems from an incident about some  
20 young kids shooting animals with BB guns and there's nothing to  
21 contradict that in the record.

22 The crux of the matter, I suppose, is really just as  
23 the Government articulated, the danger to two alleged victims,  
24 one of whom is Ms. Swarner's daughter. And the question then for  
25 the Court is can there be some conditions that you can fashion

1 that would reasonably protect against any such danger? And I  
2 would submit that there are. I mean, if she cannot communicate  
3 with them in any sort of digital fashion.

4 If she is at a halfway house in Del Rio, three hours  
5 away, with no access to phone, internet, or other means of  
6 contacting either of them, the only one that she can write to is  
7 her daughter and those letters are reviewed by CPS, then I think  
8 that that dangerousness is sufficiently ameliorated and is  
9 protected by the conditions of the Court.

10 And so I think that number one, that we have rebutted  
11 the presumption, and number two, that the Government has not  
12 shown how Ms. Swarner will continue to pose any sort of danger if  
13 she has absolutely no way of contacting CV1 and CV2. It is only  
14 through correspondence that is reviewed by a CPS officer who is  
15 antagonistic to Ms. Swarner and is looking to take her kids away  
16 from her. And so we think that the Court can and should fashion  
17 terms of release. Thank you.

18 THE COURT: Thank you. You look like you were about to  
19 say something?

20 MR. CALVE: Your Honor, I have brief responses to a  
21 couple of those points, if the Court would like to hear it. But  
22 if not --

23 THE COURT: It's fine. I'll allow you the reply.

24 MR. CALVE: Thank you, Your Honor. On the question of  
25 taking away her ability to talk to these victims, I just want to

1 reiterate that after CV1's mother took away the secret phone that  
2 Defendant had given him for their communications, she found him.  
3 She got on TikTok and she still found a way to communicate with  
4 him and to communicate about his future testimony with him. And  
5 then she told CV2, in an effort to, I would say cover her tracks,  
6 to make sure that those messages were deleted.

7 So it's not a question of going through the proper  
8 channels and communicating with the kids. It's that she'll find  
9 other ways to talk to the victims in this case, and specifically  
10 to talk to them about the matters that had been investigated or  
11 are being prosecuted.

12 I'd also emphasize that we're not just talking about  
13 online digital communications. This part of the proffer had to  
14 do with how CV1 was coming to the Defendant's home. She was  
15 giving him rides. And that's where all of this happened. It's  
16 in-person sexual contact at her residence that she facilitated.  
17 It's not just a question of digital communications. And that  
18 would be the scope of my response, Your Honor.

19 THE COURT: Okay. Thank you. All right.

20 Ms. Swarner, in this case, the issue that the lawyers  
21 are discussing is an issue of dangerousness in the community.  
22 Not really flight risk isn't really the issue here. I have to  
23 say that I had already written down before Mr. Calve just said  
24 that, this is not a case about -- just about digital  
25 communications.



1           This is a case about actual sexual conduct between  
2   minor children being encouraged, maybe even more than encouraged,  
3   actively facilitated by a trusted grown up in their life. And  
4   the crux of the case is not digital communication. It's  
5   according to the proffer, the intentional manipulation of  
6   children to engage in sexual activity that's inappropriate for  
7   their age and stage of development.

8           The level of dishonesty and deception that was  
9   exhibited at multiple junctures is very, very concerning, and  
10   does give me pause in how much weight to give to the  
11   psychologist's report.

12           And especially since the psychologist's report, in my  
13   opinion, was primarily more his conclusions on what conditions  
14   would be appropriate, but was quite light on analysis of how he  
15   reached those conclusions based on the record that we have before  
16   us.

17           Given your prior criminal history, which does -- I  
18   mean, it was a long time ago, but it does involve violent  
19   behavior, the nature of the offense and the minors involved. I  
20   don't think the only question is whether there's danger to CV1  
21   and CV2. I mean, I just don't have confidence that the  
22   propensity to engage in that type of behavior might not also  
23   affect other children who you could come into contact with.

24           You're subject to a mandatory minimum here. This is a  
25   difficult case. But I think the Government has met its burden,

1 and I'm ordering you detained, or remaining detained.

2 Thank you. We are in recess.

3 (Proceedings adjourned at 3:44 p.m.)

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6 **C E R T I F I C A T E**

7 I, DIPTI PATEL, court-approved transcriber, certify that the  
8 foregoing is a correct transcript from the official electronic  
9 sound recording of the proceedings in the above-entitled matter.

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11 

12 \_\_\_\_\_  
13 DIPTI PATEL, CET-997

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Date: December 19, 2022